

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-50157  
Summary Calendar

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Angel Martinez, M.D.,

Plaintiff-Appellee,

versus

Val Verde County Hospital  
District D/B/A/ Val Verde  
Memorial Hospital, ET AL.,

Defendants,

David B. Armstrong, Individually  
and as Administrator, Memorial  
HealthCare Systems D/B/A  
Memorial Management Services, Inc.,  
and Memorial Care Management Services, Inc.,

Defendants-Appellants.

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Appeal from the United States District Court  
for the Western District of Texas  
(DR-92-CV-65)

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(January 12, 1995)

Before JOHNSON, DeMOSS, and PARKER, Circuit Judges.

JOHNSON, Circuit Judge:<sup>1</sup>

This is an appeal from a denial of qualified immunity to David B.

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<sup>1</sup>Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to this Rule, the Court has determined that this opinion should not be published.

Armstrong ("Armstrong"), Individually and as Administrator, Memorial HealthCare Systems d/b/a/ Memorial Management Services, Inc., and Memorial Care Management Services, Inc. (collectively "Memorial"). We hold that there are material fact issues in dispute concerning the basis for the actions giving rise to this suit. This Court has held that "if disputed factual issues material to summary judgment are present, the district court's denial of summary judgment on the basis of immunity is not appealable." *Lampkin v. City of Nacogdoches*, 7 F.3d 430, 431 (5th Cir. 1993), *cert. denied*, 114 S. Ct. 1400 (1994) (quoting *Feagley v. Waddill*, 868 F.2d 1437, 1439 (5th Cir. 1989)). We therefore have no jurisdiction over the appeal and dismiss.

#### I. Facts & Procedural History

Memorial is a private health care organization which provides services to hospitals and medical districts. The Val Verde County Hospital District (the "Hospital District"), a political subdivision of the State of Texas, owns and operates the Val Verde Memorial Hospital (the "Hospital") in Del Rio, Texas. Val Verde contracted with Memorial to provide administrative services to the Hospital. Memorial provided Armstrong to serve as the Hospital's administrator pursuant to Memorial's contractual duties.

The Hospital also had a contract with The Sterling Healthcare Group, Inc. and The Sterling Healthcare, Inc. (collectively "Sterling"), which provided Sterling with the exclusive right to provide doctors to staff the Hospital's emergency room. Angel

Martinez, M.D. ("Martinez") was provided by Sterling pursuant to that contract to serve as the Emergency Room Director of the Hospital.

This suit arises out of a 1992 incident in which Armstrong and the Board of Directors of the Hospital (the "Board") called for Martinez's dismissal. Dr. Martinez sued Armstrong, the Hospital, the Medical District, Sterling, and Memorial under 42 U.S.C. § 1983 asserting that the defendants violated his civil rights by firing him on the basis of his race and without due process of law.

Armstrong and Memorial responded by filing for summary judgment on the ground of qualified immunity. Armstrong and Memorial claim, first, that they are state actors given their contractual assumption of the State's duty to providing health care services and, second, that they acted objectively reasonably so as to qualify for immunity from suit.

## II. Discussion

Because this case is on appeal from a summary judgment motion, this Court reviews the record de novo and examines the evidence in the light most favorable to the non-movant.<sup>2</sup> *Lampkin v. City of Nacogdoches*, 7 F.3d 430, 434 (5th Cir. 1993), *cert. denied*, 114 S. Ct. 1400 (1994). Appellants will prevail if they have demonstrated

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<sup>2</sup>Given that this Court's review is de novo, the fact that the district court may have denied the motion for summary judgment on alternative grounds is irrelevant. In the present case, the district court based its denial on its opinion that private entities and/or private individuals cannot assert the defense of sovereign immunity—even when fulfilling the state's duties pursuant to a contract with the state. Because we dispose of this case on jurisdictional grounds, we do not address the scope of qualified immunity in relation to private parties.

that there are no genuine issues of material fact and that they are entitled to summary judgment as a matter of law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).

According to the Supreme Court, the first inquiry in the examination of a defendant's claim of qualified immunity is whether the plaintiff has alleged the violation of a clearly established Constitutional right. *Siegert v. Gilley*, 500 U.S. 226, 231 (1991). If there is no genuine issue that the plaintiff has alleged the violation of a clearly established right, then the Court must next ascertain the objective reasonableness of the defendant's actions. See *Johnston v. City of Houston*, 14 F.3d 1056, 1060 (5th Cir. 1994). If disputed factual issues material to qualified immunity are present, the district court's denial of summary judgment is not appealable. See *id.*

Certainly, Martinez has alleged the violation of a clearly established right—the right to be free from racial discrimination in hiring and firing decisions by an employer. The district court correctly reasoned that constitutional prohibitions against race and ethnic discrimination "are so clearly established that a reasonable person would be aware of these rights." Record at 1559.

The analysis must, therefore, proceed to an inquiry as to whether an objectively reasonable basis existed for Armstrong's and Memorial's decision to discharge Martinez. In its Order Denying Defendant's Motion for Summary Judgment, the district court held that the proffered excuse for Martinez's discharge is a matter in dispute. The district court's decision seems to be more than

justified given the conflicting summary judgment record. Armstrong and Memorial claim that Martinez's discharge was based on various complaints received from patients and Hospital staff. However, Martinez offered sufficient evidence to raise the possibility that these complaints served as a pretext for intentional racial discrimination.<sup>3</sup> Given this factual dispute which seriously questions the basis for the qualified immunity defense, the summary judgment was properly denied.

### III. Conclusion

Because the record as it presently stands suggests disputed issues of material fact relevant to Armstrong's and Memorial's qualified immunity defense, the defense cannot now prevail as a matter of law and this court is without jurisdiction to consider their interlocutory appeal.

APPEAL DISMISSED.

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<sup>3</sup>In fact, the district court found that Martinez had established a prima facie case for intentional racial discrimination. Such evidence included statistical data that there had been a severe under-representation of hispanic emergency room directors and physicians in the Hospital. Specific evidence of discrimination included the exclusion of the Hospital's "hispanic voice" in the Board meeting in which the decision to dismiss Martinez was made and all subsequent meetings. Further, there was evidence that complaints against white emergency room physicians were treated differently from those against Martinez.